Supreme Court, U.S.
FILED

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No.

In The

Supreme Court of the United States

PORTIA BASS,

Petitioner,

v.

E.I. DUPONT DE NEMOURS AND COMPANY,

Respondent.

Petition For a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

1. Where Virginia has abolished all state remedies for employment discrimination, does the Virginia one year statute of limitations for defamation actions, Va. Code §8.01-247.1, violate equal protection, where its application with Title VII's jurisdictional requirement (42 U.S.C. §2000e5(f)(1), deprives a citizen of her state given remedy for defamation because the citizen is forced to submit to the Equal Employment Opportunity Commission's administrative procedures before acquiring the right to sue in federal court?

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In The

SUPREME COURT OF THE UNITED STATES

PORTIA BASS,

Petitioner,

v.

E.I. DUPONT DE NEMOURS AND COMPANY,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Portia Bass (Bass), Petitioner, by counsel respectfully requests that a writ of certiorari issue to review the judgment and opinion of the Court of Appeals of the Fourth Circuit.

OPINIONS BELOW

The order of the Court of Appeals, *Bass v. E.I. DuPont de Nemours and Co.*, No. 01-1073 (4th Cir. February 5, 2002), denying a rehearing en banc is unreported and set forth in App. -21-. The opinion of the Court of Appeals, *Bass v. E.I. DuPont de Nemours and Co.*, No. 01-1073, 2001 U.S. App. Lexis 474 (4th Cir. January 10, 2002), affirming the District Court's order is unpublished and set forth in App. -1-. The District Court's opinion and order, *Bass v. E.I. DuPont de Nemours and Co.*, No. 500CV:00064 (W.D. Va. December 15, 2000), ruling that Bass's defamation claim was barred by the statute of limitations is unreported and set forth in App. -11-, -19-.

JURISDICTION

The judgment of the Court of Appeals for the Fourth Circuit was entered on January 10, 2002. App. -1-. A timely petition for rehearing en banc was denied on February 5, 2002. App. -21-. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

Because the proceeding draws into question the constitutionality of the mandatory administrative procedures of Title VII of the Civil Rights Act of 1964 as amended, 42 U.S.C. §2000e-5(f)(1) and neither the United States nor any agency, officer, or employee thereof is a party, it is noted that 28 U.S.C. §2403 may be applicable. In addition, no court of the United States as defined by 28 U.S.C. §451 has, pursuant to 28 U.S.C. §2403, certified to the Attorney General the fact that the constitutionality of 42 U.S.C. §5(f)(1) has been drawn into question.

Because the question presented draws into question the constitutionality of a statute of the Commonwealth of Virginia, namely Va. Code §8.01-247.1 and neither the Commonwealth of Virginia nor any agency, officer, or employee thereof is a party, it is noted that 28 U.S.C. §2403(b) may be applicable. This proceeding originated in a court of the United States as defined by 28 U.S.C. §451, namely the United States District Court for the Western District of Virginia Harrisonburg Division and said court did not certify to the Attorney General of Virginia, the constitutionality of Va. Code §8.01-247.1 has been drawn into question.

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

This case involves U.S. Const. amend. XIV, U.S. Const. amend. V, 42 U.S.C. 2000e-5(f)(1), Va. Code Ann. §2.2-2639(D) (West 2001) formerly Va. Code Ann. §2.1-725, Va. Code Ann. §8.01-230, and (West 2001) Va. Code Ann. §8.01-247.1 (West 2001). The constitutional provisions and statutes are set forth in App. -23- through -30-.

STATEMENT OF THE CASE

Petitioner, Portia Bass, was employed with respondent from 1984 to 1999, when it fired her. She was a chemist with extensive experience as a chemical regulatory affairs specialist. The last seven years, she was the Global Lycra Toxic Substances Control Act Coordinator responsible for all the employer's Lycra domestic and international plants' compliance with the Toxic Substances Control Act (TSCA), 15 U.S.C. §2601 et seq. Plant employees on several plants, transportation personnel, the fire department, emergency response crews, and chemical vendors relied upon Bass to tell them that it was safe to handle a chemical, how to handle a chemical, what to do if a chemical was spilled or leaked, and the consequences if the chemical were handled improperly.

In July of 1998, Bass was summarily relieved from her position of Global Lycra TSCA Coordinator with no warning and demoted to a lesser position. When she asked for the reasons, the employer gave her none. After repeated requests to be given a reason for her demotion, one month later the employer finally gave Bass reasons, but admitted that no one in the company had ever mentioned these supposed deficiencies for the entire seven years, during which she directed the employer's

chemical regulatory compliance for the Lycra strategic business unit. A few short months later, the employer commanded Bass to resume her previous duties as Global Lycra TSCA Coordinator, while having no contact with the inexperienced biologist who had taken over the position and who was to retain the title and the position. Submission to the employer's request would have required Bass to certify the accuracy of hazardous chemical information to which she neither had access to nor knowledge of in violation of federal and state law. She refused to do so. As a direct consequence, Bass filed a charge with the Equal Employment Opportunity Commission (EEOC) on May 10, 1999. On June 16, 1999, the employer fired her.

On August 10, 1998, the Global Lycra Human Resources Manager wrote and disseminated a defamatory letter about Bass's ability to perform her duties as the Global Lycra TSCA Coordinator to 12 persons within the corporation. The letter was never given to Bass.

The EEOC mailed Bass a right to sue letter on May 18, 2000. The defamatory letter was attached as an exhibit to the employer's EEOC response. Bass became aware of the defamatory letter in July 2000, several weeks after she received her right to sue letter and only after she was forced to use extraordinary efforts to obtain the few items that remained in her EEOC file. On August 7, 2000, Bass filed a Title VII complaint with a state law defamation claim included.

The U.S. district court dismissed the defamation claim as barred by the one year statue of limitations of Va. Code §8.01-247.1. The U.S. Court of Appeals affirmed the dismissal and denied a rehearing.

REASONS FOR GRANTING THE WRIT

I.

The application of the jurisdictional requirements of Title VII together with Virginia's one year defamation statute of limitations deprives citizens of equal protection and due process under the law.

The mandatory administrative procedures of Title VII, 42 U.S.C. §2000e(f)(1), and Virginia's one-year statute of limitations for defamation, Va. Code Ann. §8.01-247.1 (West 2001), operate with one another to strip discrimination victims of their right to a remedy for defamation. The Commonwealth of Virginia gave each of its citizens a right of action to redress an injury to his or her reputation in the form of a defamation action. However, each citizen must act upon that right within one year from the date of the accrual of the defamation, which is the date the defamation occurred. Va. Code. Ann. §§8.01-247.1,8.01-230. Therefore, in order to act, the citizen must discover the defamation within one year.

The issue of equal protection and due process bursts forth, when an employee is defamed by her employer. In such a situation, the defamation claim will be attendant to a claim of employment discrimination. Yet, Virginia has abolished all state remedies for employment discrimination. Va Code Ann. §2.2-2639(D) (West 2001), formerly Va. Code. §2.1-725(D); *Mitchem v. Counts,* 259 Va. 179,185-86, 523 S.E.2d 246,249-50 (2000). Thus, Title VII is the employee's only redress. *Id.* However, the employee is prohibited from filing an action in court on her Title VII claims until she receives a right to sue letter from the EEOC. 42 U.S.C. §2000e-5(f)(1) (West 2001). The EEOC process necessarily takes at minimum one year. After the employee files a charge within 300 days from the discriminatory

acts, the employee cannot even request a right sue letter until 180 days have passed. 42. U.S.C. § 2000e-5e. Then there is another 90 day period in which the complaint will be filed. 42 U.S.C. §2000e-5(f)(1). At this point 570 days have passed; the one year statute of limitations has run. Because the employee's defamation claim is wrapped up in her Title VII claim, the citizen employee is left on the outside looking in. The employee has no right nor any means to compel the employer to reveal the defamation before filing suit. However, Title VII and Va. Code. Ann. §8.01-247.1 require the employee to do just that in order to preserve her right to seek redress for defamation. The only avenue to discover the defamation is via the discovery process of the Federal Rules of Civil Procedure. But, the employee cannot embark on discovery until she has filed her Title VII action in federal court, which will in all cases be after the one year statute of limitations has run, due to Title VII's requirement that the employee must first submit to its time consuming processes prior to seeking redress in court.

II.

The Statutory Framework of Virginia's Statute of Limitations and Title VII Deprived Bass of her Right to a Remedy for Defamation.

Virginia's one year statute of limitations for defamation actions and the elimination of all state remedies for employment discrimination claims, together with the one year statute of limitations' operation with Title VII's mandatory submission to the EEOC process requirement effectively blocked Bass from being able to seek a remedy for the employer's defamation of her professional reputation.

Bass began experiencing extreme difficulties at work, such as being demoted with no warning for reasons unknown to

anyone in the company until after her demotion, being ordered to resume the position from which she was demoted even though someone else was to retain the position, and being ordered to sign off on hazardous chemicals without verifying the information she was certifying to be true. Bass attributed her terrible plight to discrimination and took prompt action by filing the required charge with the EEOC. The Global Lycra Human Resources Manager's defamatory letter, disseminated to a several persons at several different company locations, about Bass was clearly related to the trouble being brought down upon Bass.

One year after Bass filed a charge, the EEOC finally issued her a right to sue letter. Several weeks later, Bass eventually received the sparse EEOC file. The defamatory letter was attached as an exhibit to the employer's EEOC response. Only at this time did Bass become aware of the letter. Within 90 days after the issuance of the right to sue letter, Bass filed a complaint in federal court including a claim for defamation. Had she been able to proceed directly to court, she would have filed suit in May of 1999 (the same time that she filed a charge with the EEOC), began discovery, and discovered the defamatory letter. At that time she could have filed an amended complaint and the defamation claim would have related back to the original complaint alleging employment discrimination.

In the instant case the defamatory letter was secretly published within the company. Thus, as Bass had no right to compel the employer to reveal the letter prior to filing an action in court, her only means to discover the letter was for the employer to tell her. It is contrary to logic and common sense to require a victim's remedy to depend upon the wrongdoer's voluntarily admission of its wrongdoing.

The one year limitations period for defamation actions should not apply to secretly published or otherwise inaccessible defamatory communications. *Semida v. Rice,* 863 F.2d 1156,1161 (4th Cir. 1988). Such application gives employers license to go about pouncing upon defenseless employees annihilating their careers and destroying their livelihoods with impunity. Bass had a defamation action against the employer because employers are liable for defamation committed by it employees, even if the defamation is against another employee. *Great Coastal Express, Inc. v. Ellington*, 230 Va. 142, 334 S.E.2d 846 (1985). Furthermore, defamatory statements that are communicated to third parties, who are fellow employees that have no duty or interest in the subject matter, are not privileged. *Larimore v. Blaylock,* 259 Va. 568,574, 528 S.E.2d 119,122 (2000). As the defamatory letter about Bass was sent to several different employees each at a different location, intracorporate immunity does not apply to Bass's defamation claim. Moreover, Bass is entitled to an opportunity to prove that the recipients of the defamatory letters had no duty or interest in the subject.

The events alleged in Bass's complaint, that constituted the Title VII claims, involved the issues surrounding the defamatory letter and led her to file a charge of discrimination with the EEOC. Filing an Equal Pay Act claim would not have yielded up the defamatory letter because the letter is no way related to compensation information. On the Equal Pay Act claim, Bass would have been limited to discovery of compensation issues. Interrogatories and document production requests concerning the salaries would have produced titles and salary amounts that is clearly unconnected to a letter defaming Bass's reputation as a regulatory affairs chemist. Moreover, the defamation claim could not relate back under Fed. R. Civ. P. 15(c) because the letter did not arise from the same transaction or occurrence as the facts making up the Equal Pay Act. In

addition, filing a wrongful discharge claim produces the same result. Because a wrongful discharge claim cannot be based upon employment discrimination, such an action based upon violation of Virginia's Occupational, Safety, and Health Program (VOSH) would not arise out of the same transaction or occurrence as the defamatory letter. In the instant, case Bass was ordered to certify information about hazardous chemicals about which she had no knowledge, which is a crime under Va. Code Ann. §40.1-51.4:2. Discovery on whether the employer's command to Bass was in violation of VOSH.is unrelated to the defamatory letter. The sole cause of action that would have brought forth and been related to the defamatory letter is an employment discrimination action, which is unavailable in Virginia and available only after a substantial amount of time has passed in federal court.

III.

Virginia's One Year Defamation Statute of Limitations Is a Violation of Equal Protection as Applied to Employees Who Live in the Commonwealth.

Virginia's one year defamation statute of limitations, as applied to employees independent of Title VII, results in an unconstitutional violation of equal protection and a denial of due process. When a state gives its citizens a right, it must also provide a remedy for that right. For a right without a remedy is no right at all. Virginia created a right to a remedy for defamation. Then, the Commonwealth arbitrarily set a one year statute of limitations, which deprives a certain class of its citizens of the right to a remedy for defamation. Each citizen of Virginia is entitled to seek redress for an injury to her reputation. However, only employees defamed by their employers are left without a remedy. The Commonwealth failed to provide such employees with a means to discover, compel, or force the

employer to reveal the defamation.

The employee's plight is worsened by that fact that the employee must plead the defamatory words in haec verba to state a claim for defamation in state court. *The Federal Land Bank of Baltimore v. Birchfield*, 173 Va. 200,215 3 S.E.2d 405,410 (Va. 1939). Thus, the employee has to be aware of the defamation, in order to file an action alleging defamation because the exact words must be stated in the complaint. The employee cannot use official discovery procedures until the she files a complaint in state or federal court. But the employee cannot file a complaint alleging the defamation until she knows what the defamatory statements are. The relation back provisions of the Virginia and Federal Rules of Civil Procedure are of no assistance to the employee, because the only cause of action that would reveal the defamation is an employment discrimination action, for which there is no remedy in Virginia and the Federal remedy looms off in the distance beyond the one year statute of limitations, which the employee must meet. Therefore, the employee must be entitled to pre-complaint discovery on a yearly basis in order to have a remedy. Clearly, such a thing is unworkable. The right to a remedy for defamation must be restored to Bass and all employees, who live in Virginia.

IV.

The Issue, of the Application of Title VII's Administrative Procedures Together with a State Statute of Limitations for a State Cause of Action which is Inexorably Intertwined with a Title VII Claim, is a Question of First Impression.

This Court has not addressed the issue of the result of the operation of Title VII's mandatory requirement, that discrimination victims submit to its process prior to filing an action in court, with Virginia's one year statute of limitations for

defamation actions, which are tied to the employee's Title VII discrimination claim, where there is no state remedy for discirmination. No United States Court of Appeals or District Court has addressed the issue. In the instant case, the District Court and Court of Appeals' opinions conspicuously declined to address Bass's equal protection and due process arguments.

The effect of the application of the federal statute and the state statute of limitations disenfranchises an entire class of persons from a right to a state cause of action. Such an application has far reaching effects beyond petitioner in this case and concerns the fundamental meaning of equal protection and due process.

CONCLUSION

The decision of the Court of Appeals for the Fourth Circuit disenfranchises an entire class of persons from equal protection and denies them due process of law. Therefore, Petitioner respectfully prays that a writ of certiorari be issued to review the judgment of the Court of Appeals for the Fourth Circuit.

RESPECTFULLY SUBMITTED,

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PORTIA BASS,

Plaintiff-Appellant,

V.

E. I. DUPONT DE NEMOURS& COMPANY,

Defendant-Appellee.

No. 01—1073

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

2002 U.S. App. LEXIS 474; 28 Fed. Appx. 201

October 30, 2001, Argued
January 10, 2002, Decided

NOTICE:
[*1] RULES OF THE FOURTH CIRCUIT COURT OF APPEALS MAY LIMIT CITATION TO UNPUBLISHED OPINIONS. PLEASE REFER TO THE RULES OF THE UNITED STATES COURT OF APPEALS FOR THIS CIRCUIT.

PRIOR HISTORY:
Appeal from the United States District Court for the Western District of Virginia, at Harrisonburg. Jackson L. Kiser, Senior District Judge. (CA-OO--64-5).

DISPOSITION:
Affirmed in part, and appeal dismissed in part.

COUNSEL:
ARGUED: Tamika Chelsea Harris, Waynesboro, Virginia, for Appellant.

James Moss Johnson, Jr., MCGUIRE WOODS, L.L.P., Charlottesville, Virginia, for Appellee.

ON BRIEF: H. Craig Wood, MCGUIRE WOODS, L.L.P., Charlottesville, Virginia, for Appellee.

JUDGES:
Before WILKINS, LUTTIG, and GREGORY, Circuit Judges.

OPINION:

PER CURIAM:

This case involves numerous claims by the appellant, Portia Bass, against her former employer, E.I. du Pont de Nemours & Co. (DuPont). The district court granted two separate motions to dismiss, and Bass has appealed both. We dismiss a portion of the appeal for lack of appellate jurisdiction, and affirm in all other respects.

I.

Because of the procedural posture of the case, we assume the veracity of the following allegations. Bass is a 50 year-old African—American female who worked for DuPont for 15 years. She was DuPont's **[*2]** Global Lycra Toxic Substances Control Act (TSCA) Coordinator. Bass was demoted to a lesser position, and replaced in her former position by Nancy Deputy, a white woman under forty years of age. Though inexperienced and unqualified for the job, Deputy was given a superior

compensation package. Bass complained of the demotion in a letter to management, which was disseminated to various managers. Bass was ridiculed by these managers because of the letter. Another manager, Susan Dahl, wrote a defamatory letter regarding Bass that was circulated to twelve corporate executives.

At some point after the demotion, Bass was ordered to resume her previous duties as TSCA Coordinator, but with the restriction that she was to have no contact with Nancy Deputy, who would also retain the position. Bass was also subjected to additional verbal abuse by co—employees, which she reported to two DuPont Vice Presidents.

As part of her job, Bass was required to ensure the accuracy of certain health and safety data. Because of the restrictions that were placed on her upon resumption of TSCA duties, Bass did not have access to the information necessary to make accurate assessments of the data.

Bass alleges **[*3]** that she was consistently paid less than similarly situated white men. On May 10, 1999, Bass filed a discrimination complaint with the EEOC. On June 16, 1999, Bass was fired. This lawsuit ensued.

Bass's Complaint and First Amended Complaint alleged various nonspecific causes of action which the district court found could be broadly grouped as follows: (1)Title VII discrimination, retaliation, and hostile work environment, *42 U.S.C. § 2000e;* (2) Equal Pay Act violations, *29 U.S.C. § 206(d);* (3) a state law defamation claim; (4) a state law wrongful discharge claim, Va. Code § 40.1—51.2:1; (5) a state law spoliation of evidence claim; and (6) a state law tortious interference with due process claim. DuPont moved for dismissal of the wrongful discharge, defamation, spoliation of evidence, and tortious interference

claims pursuant to Rule 12(b) (6) of the Federal Rules of Civil Procedure. DuPont also moved for summary judgment on the Equal Pay Act claim Pursuant to Rule 56 of the Federal Rules of Civil Procedure. In an order dated December 15, 2000, the district court granted DuPont's motion to dismiss and denied DuPont's motion for summary **[*4]** judgment.

On January 19, 2001, Bass filed her Second Amended complaint, realleging the remaining claims and adding several new claims. The complaint contained eleven counts: Count I—-Title VII race discrimination; Count Il-—age discrimination in violation of the Age Discrimination in Employment Act; Count Ill--Title VII sex discrimination; Count IV—-wage discrimination in violation of the Equal Pay Act; Count V-—Title VII retaliation; Count VI--Title VII hostile environment; Count VII--ADEA hostile environment; Count VIII-conspiracy in violation of *42 U.S.C. § 1985(3);* Count IX--a *Bivens* claim; Count X—-common law conspiracy to hinder pursuit of discrimination claim; and Count XI-—common law conspiracy to destroy evidence. On March 19, 2001, the district court granted DuPont's motion to dismiss Counts VI through XI.

On March 19, 2001, the district court also granted Bass's motion for entry of judgment on the claims dismissed by the December 15 order pursuant to Rule 54(b) of the Federal Rules of Civil Procedure. Bass did not move for a similar entry of judgment on the claims dismissed by the March 19 order.

Bass has appealed both the December 15 order **[*5]** and the March 19 order.

II.

We must address a preliminary issue before reaching the merits of the appeal. DuPont has filed a motion to dismiss the

appeal from the district court's March 19 order for lack of appellate jurisdiction. We agree that we do not have jurisdiction over that portion of the appeal.

Unlike the appeal from the December 15 order, entry of judgment has not been made on the claims dismissed by the March 19 order. Accordingly, the district court's decision as to these claims lacks finality under *28 U.S.C. § 1291.* See *also* Fed. H. Civ. P. 54(b).

Bass argues that the March 19 decision is appealable under two exceptions to the finality requirement: pendent appellate jurisdiction and the *Cohen* collateral order doctrine. Neither of these exceptions applies.

First, Bass argues that we have discretion to exercise pendent appellate jurisdiction over otherwise non-appealable orders that "are reasonably related to the appealable order when that review will advance the litigation or avoid further appeals." *Hoechst Diafoil* Co. v. Nan 1'a Plastics Corp., 174 F.3d 411, 416 (4th Cir. 1999) . In *Hoechst,* however, we noted **[*6]** that the viability of the doctrine of pendent appellate jurisdiction had been cast into some doubt by the Supreme Court's decision in *Swint v. Chambers County Comm 'n, 514 U.S. 35, 131 .L. Ed. 2d 60, 115 S.* Ct. *1203 (1995). See Hoechst, 174 F.3d at 416.*

In *Swint,* the Supreme Court, while not definitively settling whether the exercise of pendent appellate jurisdiction is ever appropriate, sharply limited its potential reach. The Court left open the possibility that pendent appellate jurisdiction might be appropriate if a court of appeals with jurisdiction over one ruling, conjunctively reviews a related ruling that is "inextricably intertwined" with the appealable order, or if review of the

otherwise non-appealable order is "necessary to ensure meaningful review" of the appealable order. *Swint, 514 U.S.* at *51.* See *also Jenkins v. Medford, 119 F.3d 1156, 1159 (4th Cir. 1997)* (en banc); *Taylor v. Waters, 81 F.3d 429, 437 (4th Cir. 1996)* (citing *Swint)* . Bass's appeal does not meet this test. While the claims dismissed by the two orders do arise out of the same set of alleged facts, the claims resolved [*7] by the December 15 order are easily separated from the claims resolved by the March 19 order. The claims involve different legal issues. *Swint, 514 U.S.* at *51.* Indeed, it appears Bass argued as much in seeking partial entry of judgment pursuant to Rule 54(b). See Appellee's Motion to Dismiss the Appeal of Counts VI-XI for Lack of Jurisdiction, Ex. A.

Second, the *Cohen* collateral order doctrine does not provide a basis for jurisdiction over the March 19 order. *Cohen v. Beneficial Industrial Loan Corp., 337 U.S. 541, 546, 93 L. Ed. 1528, 69 S. Ct. 1221 (1949). Cohen* authorizes jurisdiction only over "decisions that are conclusive, that resolve important questions separate from the merits, and that are effectively unreviewable on appeal from the final judgment in the underlying action." *Swint, 514 U.S.* at 42.

Bass's appeal fails to qualify. *First,* under Rule 54(b), the March 19 order remains subject to revision at any time before entry of judgment, and is therefore not conclusive. *Second,* the issues resolved by the March 19 order are not separate from the merits, they are the merits. *Third,* the March [*8] 19 order is clearly reviewable on appeal. DuPont's motion to dismiss Bass's appeal from the district court's March 19 order is therefore granted.

III.

Remaining before us is the appeal from the December 15 order. We review a Rule 12(b) (6) dismissal de *novo. Edwards v. City of Goldsboro, 178 F.3d 231, 243 (4th Cir. 1999).* "[A] Rule 12(b) (6) motion should only be granted if, after accepting all well—pleaded allegations in the plaintiff's complaint as true and drawing all reasonable factual inferences from those facts in the plaintiff's favor, it appears certain that the plaintiff cannot prove any set of facts in support of his claim entitling him to relief." *Edwards, 178 F.3d* at 244.

A.

The first claim dismissed by the district court was Bass's wrongful discharge claim. Bass asserts that she has stated a cause of action under Va. Code § 40.1—51.2:1, which provides:

No person shall discharge or in any way discriminate against an employee because the employee has filed a safety or health complaint or has testified or otherwise acted to exercise rights under the safety and health provisions of this Title for themselves or others.

[*9]

Bass's claim fails, however, because she has not exhausted her administrative remedies, as required by Virginia law. Va. Code § 40.1—51.2:2 provides a remedy for violations of Va. Code 51.2:1, stating:

Any employee who believes that she has been discharged or otherwise discriminated against by any person in violation of § 40.1-51.2:1 may, within thirty days after such violation occurs, file a complaint with the Commissioner alleging such discharge or discrimination. Upon receipt of such complaint, the

Commissioner shall cause such investigation to be made as he deems appropriate

(B) Should the Commissioner, based on the results of his investigation of the complaint, refuse to issue a charge against the person that allegedly discriminated against the employee, the employee may bring action in a circuit court having jurisdiction over the person allegedly discriminating against the employee, for appropriate relief.

Under Virginia law, "[when] a statute creates a right and provides a remedy for the vindication of that right, then that remedy is exclusive unless the statute says otherwise." *School Board v. Ciannoutsos, 238 Va. 144, 147, 380 S.E.2d 647, 649 (1989);* **[*10]** *see also Vansant & Gunsler, Inc. v. Washington, 245 Va. 356, 360, 429 S.E.2d 31, 33 (1993)* (same). *See Judy v. Nat'l Fruit Product Co., Inc., 40 Va. Cir. 244, 245* (City of Winchester 1996) (holding that Va. Code § 40.1—51.2:2 provides an exclusive remedy for violations based on Va. Code § 40.1—51.2:1). Accordingly, Bass must satisfy the requirements of Va. Code § 40.1—51.2:2 before initiating a lawsuit. Because she has not done so, her claim was appropriately dismissed.

B.

The district court also dismissed Bass's defamation claim. As the district court held, this claim is barred by the applicable statute of limitations. The limitations period for defamation in Virginia is one year. Va. Code § 8.01-247.1. The defamatory letter was published on August 10, 1998; this lawsuit was filed on August 7, 2000, almost a full year after the limitations period had run. Bass seeks to avoid the consequences of the statutory limitations period by arguing that we should apply a discovery rule. The Virginia General Assembly has declined to adopt a

discovery rule in defamation actions. Va. Code § 8.01-230 provides that a "right of action shall be deemed to accrue [*11] end the prescribed limitation period shall begin to run from the date the injury is sustained . . . and not when the resulting damage is discovered." The statute then enumerates specific exceptions to the accrual rule. The defamation statute of limitations is not among the listed exceptions. See Jordan v. Shands, 255 *Va. 494, 498, 500 S.E.2d 215 (1998)* ("Any cause of action that the plaintiff may have had for defamation against any of the defendants accrued on . . . the date she alleges . . . that the defamatory acts occurred. ")

C.

The third claim dismissed by the district court was Bass's spoliation of evidence claim. The district court correctly held that Virginia does not recognize a tort based on spoliation of evidence. See *Austin v. Consolidated Coal Co., 256 Va. 78, 82, 501 S.E.2d 161 (1998)* (declining to recognize the tort in case of the employer's spoliation of evidence important to an employee's suit against third parties) . In *Austin,* the Virginia Supreme Court did not specifically address whether Virginia would recognize the tort in the context of an employer's spoliating evidence of an employee's claim against the employer itself. [*12] As the district court recognized, however, there is even less reason to permit the tort in such a context. When the spoliator is the potential defendant in the case for which evidence was destroyed, the courts typically have ample alternate remedies in the form of fines, costs, adverse jury instructions, evidentiary presumptions, and default. See, e.g., Va. Sup. Ct. H. 4:12; Fed. H. Civ. P. 37. We think that Virginia would not recognize the tort of spoliation of evidence in the circumstances presented by this case.

D.

The fourth and final claim dismissed by the district court was Bass's claim that DuPont tortiously interfered with her due process rights during the EEOC investigation. This claim fails for at least two reasons. *First,* claims of tortious interference in Virginia have been limited to contractual settings. *Chaves v. Johnson, 230 Va. 112, 120, 335 S.E.2d 97 (1985);* see *also Economopoulos v. Kolaitis, 259 Va. 806, 815, 528 S.E.2d 714 (2000)* (finding no claim for tortious interference with inheritance expectancy); *Multi-Channel TV Cable Co. v. Charlottesville Quality Cable Corp., 65 F.3d 1113, 1121 (4th Cir. 1995)* **[*13]** (no claim under Virginia law for tortious interference with an irrevocable license); *Douglas v. Lancaster Community College, 990 F. Supp. 447, 467 (W.D. Va. 1997)* (no claim under Virginia law for tortious interference by employee against employer with decisions in the employment relationship)
Second, no rights of Bass's have been interfered with because "due process considerations do not attach to the EEOC investigative process." Georator Corp.v.EEOC, 592 F.2d 765, 768 (4th Cir. 1979).

IV.

We therefore conclude that the district court's December 15 order should be affirmed, and we dismiss the appeal from the March 19 order.

DISMISSED IN PART AND AFFIRMED IN PART

CLERKS's OFFICE U.S. DISTRICT COURT
AT HARRISONBURG VA
FILEDDECEMBER 15,2000
MORGAN E. SCOTT JR., CLERK

ENTERED

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA

PORTIA BASS,
Plaintiff, Case No. 5:00CV00064

V. **MEMORANDUM OPINION**

E. I. DU PONT DE NEMOURS & CO.,
Defendant.

By: Jackson L. Kiser
Senior United States District Judge

The underlying action is brought by Portia Bass, an experienced chemist working for E.I. Dupont De Nemours & Company ("Dupont") in its Lycra research division. A fifty year-old black female who was employed by Dupont for fifteen years, Bass was Dupont's Global Lycra Toxic Substances Control Act Coordinator. In this position, Bass was responsible for Dupont's compliance with various health and safety regulatory frameworks in the United States and abroad.

Bass was replaced in her employment by Nancy Deputy. Deputy is a woman, under forty years of age. Bass asserts that, despite the fact that Deputy is an inexperienced biologist who is

unqualified for the position, Deputy received a higher compensation package than did Bass. Meanwhile, Bass was demoted to another position. Bass reported this turn of events to various individuals within the organization, all to no avail. In fact, Bass alleges that Susan Dahl, a Dupont employee, circulated a defamatory letter to twelve senior managers regarding Bass.

On May 10, 1999, Bass filed a charge of discrimination with the EEOC. She was then removed from all leadership roles at the company and was prevented from attending a training course. On June 16,1999, Bass was fired. On August 7, 2000, Plaintiff brought this suit. Although the specific counts are difficult to discern from either the Complaint or the Amended Complaint, the Court concurs with Defendant in isolating six distinct theories for recovery: (1) Title VII discrimination and retaliation, 42 U.S.C.§ 2000e; (2) Equal Pay Act violations, 29 U.S.C. §206(d); (3) a state law defamation claim; (4) U.S.C.§ 2000e; (2) Equal Pay Act violations, 29 U.S.C. §§206(d); (3) a state law defamation claim; (4) a state law wrongful discharge ("Bowman") claim, Va. Code § 40.1-51.2:1; (5) state law spoliation of evidence claim; and (6) state law interference with due process and/or "EEOC duty" claims.

Defendant Dupont filed a Motion to Dismiss the counts relating to the Bowman claim, defamation, spoliation, and tortious interference. Defendant also filed a Motion for Summary Judgment on the Equal Pay Act claim. For the reasons that follow, I grant Defendant's Motion to Dismiss as to all four claims enumerated and deny Defendant's Motion for Summary Judgment on the Equal Pay Act claim.

Wrongful Discharge (Bowman) Claim

Bass' wrongful discharge claim asserts that Plaintiff was

"discriminated against, retaliated against and wrongly terminated...in violation of the Safety and Health Codes of Virginia - Va.Code § 40.1-51.2:1." Complaint ¶42.

Dupont asserts that Bass' state-law wrongful discharge claim fails because she is not a member of the class that the statute was intended to protect and because she failed to exhaust Virginia's remedial scheme for wrongful discharge. Dupont points out that § 40.1-51.2:1 was clearly only meant to protect employees who report health and safety violations from adverse job actions by the employer. Yet, even though Bass now attempts to characterize her actions as a health and safety complaint, she never raised such issues with Dupont or the Commissioner. She never filed a safety or health complaint to anyone. As a result, her discharge cannot, as a matter of law, fall under the ambit of this statute.

Because both the Complaint and Amended Complaint fail to make out a prima facie case on the wrongful termination claim, I grant Defendant's Motion to Dismiss that count.

Defamation Claim

Bass' defamation claim fails due to the statute of limitations. The alleged date of defamation occurred on August 10, 1998, nearly two years before this suit was filed. The statute of limitations for defamation is one year. Va. Code § 8.01-147.1. As a result, I find that Bass' defamation claim is time-barred. Although Plaintiff claims that her Title VII filing tolled the defamation statute of limitations, the caselaw indicates that a filing with the EEOC under Title VII does not toll an independent state action. ***Bowerman v. Industrial Towel Supply, Inc.,*** 1996 LEXIS 4662, 29-3 1 (W.D.Va. 1996) (citing *Arnold*

v. Un ited States, 816 F.2d 1306, 1312-13(9th Cir. 1987)). Indeed, Plaintiff could have always brought a suit within the limitations period in state court on another of her claims, and later amended that complaint to include the defamation charge. Similarly, she could have filed the Equal Pay Act claim in federal court, and amended that complaint to include the Title VII and defamation claims. In essence, the fact that one is pursuing a Title VII claim does not arbitrarily extend the limitations period on all other causes of action arising from the same events. Thus, I find her defamation action to be time-barred.

Moreover, Plaintiff has other significant problems with her defamation claim. First, Plaintiff appears to be suing the wrong party: the author of the defamatory letter should be the target, not Dupont itself. Indeed, Dupont never publishes the letter to anyone beyond itself. Second, Virginia's intracorporate immunity doctrine seems to bar Plaintiff from recovery for defamation. Virginia courts have held that there is no defamation when the action occurs solely within the confines of a business organization. *Lana v. Regelson,* 39 Va. Cir. 536 (Richmond 1996); *Thalhimer Bros. v. Shaw,* 156 Va. 863, 868 (1931). Since the matter occurred solely within the corporate veil, Plaintiffs claim is barred.

Overall, the defamation action seems quite problematic on many fronts. As such, I grant Defendant's Motion to Dismiss the defamation claim.

Spoliation Claim

Bass' spoliation claim fails simply because the claim is insufficient to yield recovery under Virginia law. Simply stated, Virginia does not recognize spoliation of evidence as an

independent tort action. *See Austin v. Consolidated Coal Co.,* 256 Va. 78, 82 (discussing state that recognize spoliation as a tort and expressly refusing to recognize the tort when employer spoliated evidence important to employee's suit against third party). Indeed, courts can always impose other sanctions on spoliating employers, including fines, costs, adverse jury instructions, evidentiary presumptions, or default judgment. *Crown Life Ins. Co. v. Craig,* 995 F.2d 1376 (7th Cir. 1993). Thus, I find there to be no compelling reason to create a new tort of spoliation in this case.

Even were the Court does accept Plaintiffs application of spoliation to this case, the claim would fail to produce the prima facie case as a matter of law. In states that have allowed the tort of spoliation, courts have required "willful disruption of evidence by the defendant designed to disrupt the plaintiffs case." *Austin,* 256 Va. at 82. In this matter, Plaintiff has not demonstrated any ability to prove willfulness in spoliation by Defendant Dupont. As such, the spoliation claim fails as a matter of law, were it to be accepted by the Court in the first place.

Tortious Interference Claim

Bass' tortious interference claim fails because Virginia law allows such claims only in contractual settings. Virginia courts have allowed such claims as applied to contracts. *Chaves v. Johnson,* 230 Va. 112, 120 (1985). Yet, numerous cases exist where the courts have refused to extend tortious interference to other areas of law. *Economopoulos v. Kolaitis,* 259 Va. 806, 815 (2000) (dealing with inheritance expectancy); Multi-Channel TV Cable Co. v. CharlottesvilleQuality Cable Corp., 65 F.3d 1113, 1121 (4th Cir. *1995)* (dealing with irrevocable licenses); *Douglas v. Lancaster Comm. Coil.,* 990 F. Supp. 447,467 (1997)

(regarding decisions in employer-employee relationship). Overall, it seems fair to say that Virginia courts have refused to venture much beyond contractual settings in allowing claims for tortious interference.

Beyond this harrowing legal landscape for Bass, her tortious interference claim also has two serious factual defects. First, Bass was an at-will employee of a private employer, giving her no due process rights in her business relationship with Dupont that would enable her to bring a claim for tortious interference. Second, Plaintiff never asserts the breach of a legal obligation by Dupont to her. Although Dupont may have tortiously interfered in the context of the "EEOC's duty owed to Plaintiff," Complaint ¶ 33, Bass cannot sue a defendant for the damage done by the breach of duty by a third-party. As a result, neither the termination of Bass nor Dupont's interaction with the EEOC can be said to constitute tortious interference.

An independent cause of action for tortious interference does not exist for this type of claim in Virginia. Even if such a cause of action were available to Plaintiff, her pleadings' factual defects would bar recovery in any event. As such, I grant Defendant's Motion to Dismiss the tortious interference claim.[1]

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[1]Although Plaintiff advanced a theory of conspiracy between Dupont and the EEOC in oral argument, no such allegations are crystallized in either the Complaint or Amended Complaint. As a result, such a theory is not properly before this Court, nonetheless on this Motion.

Equal Pay Act Claim

Defendant has moved for summary judgment on the claim brought under the Equal Pay Act, 29 U.S.C. § 206(d)(1). Summary judgment is appropriate where no genuine issue exists as to any material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). A genuine issue of a material fact exists "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson,* 477 U.S. at 248. In making this determination, "the court is required to view the facts and draw reasonable inferences in a light most favorable to the nonmoving party." *Shaw v. Stroud,* 13 F.3d 791, 798 (4th Cir. 1994) (citations omitted), *cert. denied,* 513 U.S. 813 (1994); *Felty v. Graves-Humphreys Co.,* 818 F.2d 1126, 1129 (4th Cir. 1987). Nevertheless, where the record taken as a whole cannot lead a rational trier of fact to find for the nonmoving party, then no genuine issue exists for trial and summary judgment is appropriate. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.,* 475 U.S. 574, 587 (1986).

Dupont contends that Plaintiff can only succeed on an Equal Pay Act claim if the comparators work at the same facility. EEOC regulations for the Equal Pay Act indicate state that the statute's "well settled meaning" for the word "establishment" was "a distinct physical place of business rather than [] and entire business or 'enterprise.'" 29 C.F.R. §1620.9. In this case, Dupont submits evidence that none of comparators worked at the same facility as did Bass; only one of them ever worked in the Commonwealth of Virginia. As a result, Dupont claims that Bass fails to make out a prima facie case under the Equal Pay Act.

However, Plaintiff has submitted her own affidavit that appears to bring her Equal Pay Act claim under an "unusual

circumstances" exception to the single establishment requirement. *Id.* Bass offers evidence that a central administrative unit hired, set wages, and assigned locations for both her and her comparators. Both the daily duties and working conditions for Plaintiff and her proposed comparators were virtually identical, according to the affidavit. In fact, Bass asserts that both she and her comparators interchanged work locations. Given the procedural posture of this Motion, I accept this evidence as true.

In this light, then, Plaintiff does state an actionable claim under the Equal Pay Act. At the very least, a genuine issue of material fact exists for a fact finder to resolve. As such, the claim survives summary judgment, and I deny Defendant's Motion.

Conclusion

For the foregoing reasons, I grant Defendant's Motion to Dismiss the Wrongful Discharge Claim, defamation claim, spoliation claim, and tortious interference claim. I deny Defendant's Motion for Summary Judgment on the Equal Pay Act claim.

12/15/2000
/s/ Jackson L. Kiser
Unites States District Judge

A true copy, TEST:
Morgan E. Scott, Jr. Clerk

CLERKS's OFFICE U.S. DISTRICT COURT
AT HARRISONBURG VA
FILEDDECEMBER 15,2000
MORGAN E. SCOTT JR., CLERK

ENTERED

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA

PORTIA BASS,
Plaintiff, Case No. 5:00CV00064

V. **ORDER**

E. I. DU PONT DE NEMOURS & CO.,
Defendant.

By: Jackson L. Kiser
Senior United States District Judge

Before this Court is Defendant's Motion to Dismiss several of the counts in Plaintiffs Amended Complaint and Defendant's Motion for Summary Judgment on one count.

Although the format of the Amended Complaint renders difficult the delineation of specific counts, the Court concurs with Defendant's assessment of specific counts alleged. As a result, this Order rules on Defendant's Motion to Dismiss Plaintiffs claim for relief on the grounds of (1) wrongful discharge, Va. Code § 40.1-51.2:1; (2) defamation; (3) spoliation; and (4) tortious interference. In addition, this Order rules on

Defendant's Motion for Summary Judgment on Plaintiffs claim under the Equal Pay Act, 29 U.S.C. § 206(d)(1).

For the reasons stated in the accompanying Memorandum Opinion, Defendant's Motion to Dismiss the four counts enumerated above is **GRANTED** and Defendant's Motion for Summary Judgment is **DENIED**.

The Clerk is directed to send a certified copy of this Order to all counsel of record.

Entered this 15TH day of December, 2000.

/s/ Jackson L. Kiser
Unites States District Judge

A true copy, TEST:
Morgan E. Scott, Jr. Clerk

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

F ILED

February 5, 2002

No. 01-1073

CA-00-64-5

PORTIA BASS

Plaintiff - Appellant

V.

E.I. DUPONT DE NEMOURS & COMPANY

Defendant -Appellee

On Petition for Rehearing En Banc

The appellant's petition for rehearing en bane was submitted to this Court. As no member of this Court requested a poll on the

petition for rehearing en banc,

IT IS ORDERED that the petition for rehearing en bane is denied.

For the Court,
/s/ Patricia S. Connor
CLERK

U.S. Const. Amend V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the or same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. Const. Amend. XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature

thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to

enforce, by appropriate legislation, the provisions of this article.

Fed. R. Civ. P. 15(c). Relation Back of Amendments

An amendment relates back to the date of the original pleading when

(1) relation back is permitted by the law that provides the statue of limitations applicable to the action, or

(2) the claim or defense asserted in the amended pleading arose out of the same conduct, transaction, occurrence set forth or attempted to be set forth in the original pleading, or

(3) the amendment changes the party or the naming of the party against whom a claim is asserted if the foregoing provisions (2) is satisfied and, within the period provided by Rule 4(m) for service of the summons and complaint, the party to be brought in by amendment (A) has received such notice of the institution of the action that the party will not be prejudiced in maintaining a defense on the merits, and (B) knew or should have known that, but ro a mistake concerning the identity of the proper party, the action would have been brought against the party.

The delivery or mailing address of process to the United States Attorney, or United States Attorney's designee or the Attorney General of the United States, or an agency of officer who would have been a proper defendant if named, satisfies the requirement of subparagraphs (A)

and (B) of this paragraph (3) with respect to the United States or any agency or officer thereof to be brought into the action as a defendant.

42 U.S.C. 2000e-5(e)- (f)(1) Enforcement provisions

(e) Time for filing charges; time for service of notice of charge on respondent; filing of charge by Commission with State or local agency.

(1) A charge under this section shall be filed within one hundred and eighty days after the alleged unlawful employment practice occurred and notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) shall be served upon the person against whom such charge is made within ten days thereafter, except that in a case of an unlawful employment practice with respect to which the person aggrieved has initially instituted proceedings with a State or local agency with authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, such charge shall be filed by or on behalf of the person aggrieved within three hundred days after the alleged unlawful employment practice occurred, or within thirty days after receiving notice that the State or local agency has terminated the proceedings under the State or local law, whichever is earlier, and a copy of such charge shall be filed by the Commission with the State or local agency.

(2) For purposes of this section, an unlawful employment practice occurs, with respect to a seniority system that has been adopted for an intentionally discriminatory purpose in violation of this title [42 USCS §§2000e et seq.] (whether or not that discriminatory purpose is apparent on the face of the seniority provision), when the seniority system is adopted, when an individual becomes subject to the seniority

system, or when a person aggrieved is injured by the application of the seniority system or provision of the system.

(f) Civil action by Commission, Attorney General, or person aggrieved; preconditions; procedure; appointment of attorney; payment of fees, costs, or security; intervention; stay of Federal proceedings; action for appropriate temporary or preliminary relief pending final disposition of charge; jurisdiction and venue of United States courts; designation of judge to hear and determine case; assignment of case for hearing; expedition of case; appointment of master.

(1) If within thirty days after a charge is filed with the Commission or within thirty days after expiration of any period of reference under subsection (c) or (d), the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission may bring a civil action against any respondent not a government, governmental agency, or political subdivision named in the charge. In the case of a respondent which is a government, governmental agency, or political subdivision, if the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission shall take no further action and shall refer the case to the Attorney General who may bring a civil action against such respondent in the appropriate United States district court. The person or persons aggrieved shall have the right to intervene in a civil action brought by the Commission or the Attorney General in a case involving a government, governmental agency, or political subdivision. If a charge filed with the Commission pursuant to subsection (b) is dismissed by the Commission, or if within one hundred and eighty days from the filing of such charge or the expiration of any period of reference under subsection (c) or (d), whichever is later, the

Commission has not filed a civil action under this section or the Attorney General has not filed a civil action in a case involving a government, governmental agency, or political subdivision, or the Commission has not entered into a conciliation agreement to which the person aggrieved is a party, the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, shall so notify the person aggrieved and within ninety days after the giving of such notice a civil action may be brought against the respondent named in the charge (A) by the person claiming to be aggrieved or (B) if such charge was filed by a member of the Commission, by any person whom the charge alleges was aggrieved by the alleged unlawful employment practice. Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the action without the payment of fees, costs, or security. Upon timely application, the court may, in its discretion, permit the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, to intervene in such civil action upon certification that the case is of general public importance. Upon request, the court may, in its discretion, stay further proceedings for not more than sixty days pending the termination of State or local proceedings described in subsections (c) or (d) of this section or further efforts of the Commission to obtain voluntary compliance.

Va. Code Ann. § 2.2-2639. Causes of action not created

A. Nothing in this article creates, nor shall it be construed to create, an independent or private cause of action to enforce its provisions, except as specifically provided in subsections B and C.

B. No employer employing more than five but less than fifteen persons shall discharge any such employee on the basis of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, or of age if the employee is forty years or older.

C. The employee may bring an action in a general district or circuit court having jurisdiction over the employer who allegedly discharged the employee in violation of this section. Any such action shall be brought within 180 days from the date of the discharge. The court may award up to twelve months' back pay with interest at the judgment rate as provided in § *6.1-330.54*. However, if the court finds that either party engaged in tactics to delay resolution of the complaint, it may (i) diminish the award or (ii) award back pay to the date of judgment without regard to the twelve-month limitation.

In any case where the employee prevails, the court shall award attorney's fees from the amount recovered, not to exceed twenty-five percent of the back pay awarded. The court shall not award other damages, compensatory or punitive, nor shall it order reinstatement of the employee.

D. Causes of action based upon the public policies reflected in this article shall be exclusively limited to those actions, procedures and remedies, if any, afforded by applicable federal or state civil rights statutes or local ordinances. Nothing in this section or §2.2-3 900 shall be deemed to alter, supersede, or otherwise modify the authority of the Council or of any local human rights or human relations commissions established pursuant to §§15.2-965 or 15.2-853 or subject to the provisions of § 2.2-2638.

Va. Code Ann. § 8.01-230. Accrual of right of action

In every action for which a limitation period is prescribed, the right of action shall be deemed to accrue and the prescribed limitation period shall begin to run from the date the injury is sustained in the case of injury to the person or damage to property, when the breach of contract occurs in actions ex contractu and not when the resulting damage is discovered, except where the relief sought is solely equitable or where otherwise provided under § 8.0 1-233, subsection C of §§8.0 1-245, §~ 8.01-249, 8.01-250 or other statute.

Va. Code Ann. § 8.01-247.1. Limitation on action for defamation

Every action for injury resulting from libel, slander, insulting words or defamation shall be brought within one year after the cause of action accrues.